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IN THE

Supreme Court of the United States

October Term, 1963.

No. 1008

MORRIS C. GOLDBERG,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit affirming the judgment of the United States District Court for the Eastern District of Pennsylvania which had adjudged petitioner guilty of wilfully attempting to evade and defeat his own income tax and the income tax of four corporations controlled by him.

OPINIONS BELOW.

The opinion of the Court of Appeals (Appendix A) is reported at 64-1 USTC ¶ 9316. The opinion of the District Court (R. 1211a-1233a) is reported at 206 F. Supp. 394.

JURISDICTION.

The judgment of the Court of Appeals was entered on March 17, 1964 (Appendix B). On March 31, 1964, the Court of Appeals entered an order staying the issuance of its mandate until April 16, 1964 (Appendix C). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. May documents be admitted in evidence against a defendant in a federal criminal trial where (a) those documents were stolen by private individuals from the defendant and from corporations of which he was the president and sole shareholder, and (b) possession of the documents was obtained by agents of the federal government by means of a promise made to one of the individuals, a co-defendant, by the U. S. Attorney and concurred in by a federal judge, that he would not go to jail if he made a full disclosure and turned over any documents he might have, and by holding out to the other individuals the hope that they might receive a financial reward for informing on the defendant?

2. May Federal Rule of Criminal Procedure 24(c), providing that alternate jurors shall replace jurors who "become unable or disqualified to perform their duties . . . ", be constitutionally interpreted to sanction the substitution of an alternate juror when, midway through the trial, it is discovered that one of the persons sitting on the regular jury had not been called to sit as a juror and hence was not qualified to take the oath?

CONSTITUTIONAL AND PROCEDURAL RULES PROVISIONS INVOLVED

The following constitutional and procedural rules provisions are relevant:

1. U. S. Constitution, Article III, section 2:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; . . ."

2. U. S. Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . ."

3. U. S. Constitution, Amendment V:

". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . ."

4. Constitution of the United States, Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, . . ."

5. Rules of Criminal Procedure, Rule 24(c):

"The court may direct that not more than 4 jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, be-